No. 96-56

Supreme Court, U.S.
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In The Supreme Court of the United States

October Term, 1995

PURE WATERS, INC.

Petitioner,

v.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES, ROLAND HARMS, DIRECTOR; OAKLAND COUNTY DRAIN COMMISSION, GEORGE W. KUHN, COMMISSIONER; CHAPTER 20 BIRMINGHAM SEWER OVERFLOW DRAIN BOARD, GEORGE W. KUHN, CHAIRMAN; CITY OF BIRMINGHAM, THOMAS M. MARKUS, CITY MANAGER

Respondents.

RESPONDENT CITY OF BIRMINGHAM'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I.

Whether the Court of Appeals erred in ruling that the FONSI (finding of no significant impact) based on the Michigan Department of Natural Resources' Environmental Assessment satisfied the procedural requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4331 et seq.

II.

Whether the Court of Appeals erred in ruling that Petitioner, PURE WATERS, INC., failed to present a prima facia case that the construction of the sewage retention basin is likely to pollute, impair or destroy the air, water or other natural resources of Michigan in violation of Michigan Environmental Protection Act ("MEPA"), MCL §691.1201 et seq.

III.

Whether the Court of Appeals was correct in not considering the National Pollution Discharge Elimination System ("NPDES") permit's monitoring of the Rouge River and implementation of additional controls, if necessary, as an improper segmentation under NEPA.

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STATEMENT OF THE CASE

A. Nature of the Case

Petitioner, PURE WATERS, INC. ("Pure Waters"), is seeking declaratory and injunctive relief against Respondents, including the CITY OF BIRMINGHAM ("Birmingham"). Petitioner alleges that Respondent, MICHIGAN DEPARTMENT OF NATURAL RESOURCES' ("MDNR"), issuance of a finding of no significant impact ("FONSI") concerning the construction of a combined sewer overflow retention treatment basin in Linden Park in Birmingham, Michigan, was a violation of both the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4331, et seq. and the Michigan Environmental Policy Act ("MEPA"), MCL §691.1201, et seq. This claim is made despite MDNR's detailed preparation of an environmental assessment ("EA"), Birmingham's appointment of a citizen's committee to hold public hearings and the consideration of several project alternatives, environmental impacts, benefits and costs.

Birmingham selected, and MDNR approved, a combined sewer overflow retention treatment basin in Linden Park so that combined sewer overflow ("CSO") would be controlled and the discharge of raw sewage into the Rouge River would be eliminated, thereby improving the public health and safety[1]. A national pollution discharge elimination system ("NPDES") permit required Birmingham to control its CSOs. The permit established three (3) phases for the irradication of the damage to the Rouge River caused by untreated sewage. The first stage was for Birmingham

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[1] As a result of litigation commenced in the Federal District Court for the Eastern District of Michigan in 1977 by the Environmental Protection Agency under the Clean Water Act, 33 U.S.C. §1251 et seq., against the communities that made up the Rouge River watershed in southeastern Michigan, a consent judgment was entered where it was resolved that all waste waters flowing into the Rouge River would be given primary and secondary treatment. This was to be accomplished in two stages. The first stage was to handle dry water conditions, including combined sewer overflows and the second stage was to address what weather conditions, including combined sewer overflows. The first stage has been completed and the Linden Park combined sewer overflow retention treatment basin is designed to address combined sewer overflows in "wet weather" conditions.

to operate, repair and maintain it existing facilities to minimize discharge; the second stage required that CSOs be controlled to eliminate the discharge of raw sewage by the year 2005. The third phase requires that additional controls be applied, if necessary, to comply with water quality standards at times of discharge. The combined sewer overflow retention treatment basin in Linden Park will satisfy phase two of the NPDES permit. Whether any additional controls will be necessary, is speculative but will be monitored by Respondents once the project is complete so that all water quality standards will eventually be met.

Several alternatives for the combined sewer overflow program were studied, including separated sewers which Petitioner favors, and after numerous public hearings, Birmingham decided construction of a combined sewer overflow retention treatment basin was the most cost effective, least intrusive alternative and identified Linden Park as the location. As a result of this decision by Birmingham and MDNR's completion of its EA and issuance of its FONSI, bonds for the financing of the project were issued and sold and construction began in December of 1994[2].

B. Proceedings in the District Court

On September 13, 1993, Citizens to Put the Issue on the Ballot, the predecessor to Pure Waters, filed its Notice of Intent to Sue under the Clean Water Act. Pure Waters waited until December 6, 1994, after financing was secured and construction of the Linden Park retention basin had begun, to file its Amended Complaint for Declaratory and Injunctive Relief against Respondents (R.2). On December 13, 1994, Pure Waters filed, and on December 15, 1994, argued, before the Honorable John Feikens, District Court Judge for the Eastern District of Michigan, that a temporary restraining order should be issued enjoining Respondents from proceeding with their construction of the Linden Park combined sewer overflow retention treatment basin until the Court could hear Pure Waters' Motion for Preliminary

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[2] As of July 19 1996, construction of the combined sewer overflow retention treatment basin is 76% complete. The project's cumulative cost as of July 19, 1996 is $20,244,194.60. June 20, 1996-July 19, 1996 Rouge River National Wet Weather Demonstration Project Monthly Construction Status Report.

Injunction (R.8). The District Court noted that the construction of the combined sewer overflow retention treatment basin was in accordance with an NPDES permit which was issued on October 19, 1989, revised on August 20, 1992, and that the permit applied to combined sewer overflow discharges (R.14). The District Court further noted that the Rouge River in southeastern Michigan is extremely polluted and that the combined sewer overflow program was developed to enact the goals of a Rouge River Remedial Action Plan ("Rouge R.A.P."), the goal being the protection of the public health by the elimination of raw sewage discharges into the Rouge River. The District Court issued a corrected Opinion and Order denying temporary restraint and certification on December 23, 1994 (R.19). Pure Waters filed a Notice of Appeal on December 16, 1994 (R.11).

The Sixth Circuit Court of Appeals dismissed Pure Waters' appeal, sua sponte, for lack of jurisdiction on January 19, 1995 (R.29). Pure Waters renewed its Motion for Preliminary Injunction on January 24, 1995 (R.27) and an evidentiary hearing was held on March 22–24, 1995.

C. Decision in the District Court

The District Court found that Birmingham will violate state and federal laws and be subject to significant penalties if it fails to comply with its NPDES permit. After listening to the testimony and reviewing the briefs filed, the District Court held that MDNR prepared an EA which met all of the requirements of NEPA, 42 U.S.C. §4332(C) and, after providing an opportunity for public comment, issued a FONSI (R.63, p.13). The District Court held that this action complied with the procedural mandates of NEPA (R.63, p.13).

After examining Pure Waters' MEPA claim, the District Court held that the construction of the Linden Park combined sewer overflow retention treatment basin will drastically improve the quality of the water in the Rouge River and that any "minimal" adverse affect of the combined sewer overflow retention treatment basin is greatly outweighed by the obvious benefits of the combined sewer overflow retention treatment basin (R.63, p.14). The District Court found no evidence that the Linden Park combined sewer

overflow retention treatment basin will "impair" the environment. The District Court was persuaded that the Respondents had, indeed, considered the potential problems with the Linden Park combined sewer overflow retention treatment basin and concluded that the Respondents had incorporated into their construction project protections for the environment to minimize any negative impacts which might possibly result. The District Court also noted that the project provided for monitoring of water quality after construction. The District Court recognized that the Rouge River did not presently meet water quality standards, and could not immediately achieve water quality standards irrespective of what action plan was adopted. The District Court held that Pure Waters had failed to establish a prima facie case of "impairment" under MEPA.

D. Proceedings in the Court of Appeals

Petitioner appealed the District Court's April 21, 1995 Opinion and Order Denying Plaintiff's Request for an Injunction. The Court of Appeals affirmed the District Court's findings that MDNR had complied with the procedural mandates of NEPA and Petitioner had failed to establish a prima facia case of "impairment under MEPA". The Court of Appeals also found that the District Court's decision to decline to grant Petitioner's request for an injunction was proper.

PETITIONER'S MISSTATEMENTS OF FACT AND LAW

A. Petitioner's Question No. 1 is Misleading

Petitioner's statement of question number 1 is inaccurate and misleading:

> Whether a court may rule, as a matter of law, that a project's significant impacts are all beneficial and therefore, no further NEPA evaluation is required, an issue in which the courts of appeals are in conflict? (Petition, p.i)

Petitioner's question suggests that the issue is whether NEPA evaluation is required if a project's impacts are all beneficial. However, both the District Court and the Court of Appeals noted that the purpose behind NEPA is to insure that agencies consider the environmental impact of their decisions and take a "hard look" at the environmental effects of a planned project. The question is, rather, whether the agency's decision after an environmental assessment, FONSI, and decision to not issue an environmental impact statement, in a project designed solely to benefit the environment with no significant adverse effects, is arbitrary, capricious or an abuse of discretion.

B. Petitioner's Statement of the Case is Misleading and Defective

Petitioner states "that from the very beginning, the proposed project was conceded as inadequate to meet state or federal water quality requirements." (Petition, p.4) This is inaccurate. Despite passing references to the significant pollution currently existing in the Rouge River watershed system, Petitioner does not want to acknowledge the pollution when looking at the project selected by Respondents to deal with combined sewer overflow. This pollution cannot be ignored. Then Rouge River is not a pristine river. It is one of the most polluted rivers in the country. Birmingham was required to address combined sewer overflow discharges. The Linden Park retention treatment basin corrects this problem and will be monitored, as provided in Birmingham's NPDES permit, so that eventual water quality standards are obtained.

SUMMARY OF ARGUMENT

1. NEPA Issue

NEPA is designed to prevent environmental degradation. It requires that environmental problems created by a federal project be considered before the project is undertaken. MDNR's environmental assessment and FONSI recognized the possible environmental concerns of the project and determined that the benefits to the environment do not warrant the time and expense of preparing an environmental impact statement. The District Court and the Court of Appeals correctly determined that Respondents had complied with the procedural requirements of NEPA and that the FONSI was not arbitrary and capricious.

2. MEPA Issue

MEPA provides relief when a plaintiff has made a prima facia showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources. The District Court and Court of Appeals correctly determined that Respondents' combined sewer overflow retention treatment basin would not impair the environment.

3. Segmentation Issue

In reviewing the NPDES permit's phased approach, the Court of Appeals was correct in declining to find an improper segmentation of a project under NEPA.

ARGUMENT

I. THE ENVIRONMENTAL ASSESSMENT AND FONSI SATISFIED THE PROCEDURAL REQUIREMENTS OF NEPA

Contrary to Petitioner's suggestion, their real objection is not NEPA's application but the particular results chosen by Respondents. The Court of Appeals affirmed the District Court's opinion and order that Respondents had complied with NEPA.

> NEPA itself does not mandate particular results, but simply prescribes the necessary process. If the adverse environmental effects of the proposed action are adequately identified and evaluated the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.

Robertson v Methow Valley Citizen's Council, 490 U.S. 332, 348; 109 S.Ct. 1835 (1989). An agency must determine whether an EIS is necessary after preparing an environmental assessment and issue a FONSI if the agency decides not to prepare an EIS. 40 C.F.R. §1501.4(c), (e). MDNR prepared an environmental assessment that met all requirements of 42 U.S.C. §4332(C) and issued a FONSI.

In 1989, the Michigan Water Resources Commission issued a NPDES permit to Birmingham that required the control of its combined sewer overflows by 1997. The permit established three phases for the correction of the problem of untreated sewage flowing into the Rouge River. In the first stage, Birmingham would operate, repair and maintain its existing facilities to minimize combined sewer overflow discharges. The second stage required that combined sewer overflow controls be implemented to eliminate the discharge of untreated overflows for the protection of the public health. Stage three required that the combined sewer overflow controls be evaluated and that further controls, if necessary, be implemented to meet water quality standards.

Birmingham appointed a citizen's committed to study Birmingham's compliance with the NPDES permit. Public hearings were held, engineers were hired to study several areas of

alternatives and identify economic and environmental impacts of the various alternatives. After several months of study, Birmingham identified the Linden Park combined sewer overflow retention treatment basin as the best method for Birmingham's compliance with the NPDES permit[3]. At the same time, MDNR was studying the Rouge problem, and reviewing Birmingham's project proposal. MDNR concluded that Linden Park combined sewer overflow retention treatment basin would remove from the Rouge River over 180 million gallons of untreated raw sewage and prevent all untreated sewage from entering the Rouge River. (R.61, pg. 79-83.) Against this benefit, MDNR recognized that some treated CSO might be introduced the Rouge River during severe storm conditions. This treated combined sewer overflow would receive primary treatment of skimming, settling and disinfectant prior to being introduced into the Rouge River. The disinfectant was to be sodium hypochlorite (a 5% chlorine solution). The annual amount of disinfectant which may be released into the Rouge River is 860 gallons (R.61, p.192).

In May of 1994, MDNR completed an environmental assessment of the Birmingham project proposal and, after an opportunity for public comment, issued its FONSI. The environmental assessment has been described as a "rough cut, low budget environmental impact statement." *Cronin v U.S. Department of Agriculture*, 919 F.2d 439, 443 (7th Cir. 1990). The environmental assessment is an established part of NEPA environmental review. *Hanly v Kleindienst*, 471 F.2d 823 (2nd Cir. 1972), cert denied, 412 U.S. 908; 93 S.Ct. 2290 (1973).

In looking at Respondents' environmental assessment, it is clear that they took the pollution of the Rouge River very seriously and spend considerable time and energy studying the impacts, costs, and benefits of the various proposals. Once an agency has made a decision subject to NEPA's procedural requirements, the only role for a court is to ensure the agency has considered the

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[3] Birmingham's citizen's committee originally selected a different method of utilizing the retention basin technology which MDNR rejected because it was not cost-effective. Pure Waters' representatives participated in the citizen's committee hearings and sewer separation was considered and rejected.

environmental consequences. *Strycker's Bay Neighborhood Council, Inc. v Karlen*, 444 U.S. 223, 227; 100 S.Ct. 497, 500 (1980). As stated in *Friends of Fiery Gizzard v Farmers Home Administration*, 61 F.3d 501, 504-505 (6th Cir. 1995), "If the agency reasonably concludes, on the basis of the environmental assessment, that the project will have no significant adverse environmental consequences, the environmental impact statement is not required."

The expenditure of funds on a project that clearly improves the quality of the human environment does not make sense and is not necessary where an agency reasonably concludes on the basis of the environmental assessment "that the project will have no significant adverse environmental consequences". In this event, an environmental impact statement is not required. *Preservation Coalition, Inc. v Pierce*, 667 F.2d 851, 855 (9th Cir. 1982).

Petitioner's reliance on *Catron v U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996) is misplaced. In that case, the secretary of the U.S. Fish and Wildlife Service determined that he was not required to comply with the documentation requirements of NEPA claiming an exemption existed under the Endangered Species Act, 16 U.S.C. §1531-44, as a matter of law. *Id.* at 1432. The District Court granted Catron County's motion for partial summary judgment finding that the secretary had failed to comply with NEPA. *Catron* is completely different than the present situation. Here, MDNR acknowledges NEPA's application and complied with its requirements.

Petitioner's argument is not strengthened by its reference to *Environmental Defense Fund v Marsh*, 651 F.2d 983 (5th Cir. 1981). In that case, an EIS was prepared by the Army Corps of Engineers for the construction of the Tennessee-Tombigbee Water Way. Subsequent to the EIS, there were major, significant substantial design changes, tripling the cost of the project, increasing the land needed by 50% (35,000 acres), flooding and waterlogging an additional 55,000 acres and increasing the amount of ground spoil to be removed by 9 million cubic yards. It was

clear that the changes had a "significant adverse impact" on the environment. The focus of that case, as opposed to the present situation, was not on a project designed solely to benefit the environment.

Interestingly, both *Environmental Defense Fund v Marsh*, 651 F.2d 983 (5th Cir. 1981) and *U.S. v South Florida Water Management District*, 847 F.Supp. 1567 (S.D. FL. 1982), affirmed in part, reversed in part, and remanded on other grounds, 28 F.3d 1563 (11th Cir. 1994), cert denied __ U.S. __, 115 S.Ct. 1956, which were referenced by Petitioner rely on *Hiram Clark Civic Club, Inc. v Lynn*, 476 F.2d 421 (5th Cir. 1973) which, in dicta, references the need for an EIS for significant beneficial impacts.

Hiram Clark is outdated, only dicta, and did not focus on the consequences of requiring an EIS where the only impact was beneficial. The Sixth Circuit Court of Appeals in *Friends of Fiery Gizzard v Farmers Home Administration*, 61 F.3d 501 (6th Cir. 1995), was cognizant of the costs involved in preparing an environmental impact statement. In that project, the environmental assessment forecast a purely beneficial impact on the living environment. The Court of Appeals noted that the purpose of NEPA was to ensure that the environmental impact of federal actions was considered. With that in mind, the court of appeals stated that if the agency reasonably concludes on the basis of the environmental assessment, "that the project will have no significant adverse environmental consequences," an environmental impact statement is not required. The Court of Appeals noted that in the years since that 1973 case, there has been "a growing awareness that routinely requiring such statements would use up resources better spent in careful study of actions likely to harm the environment substantially." *Id.* at 505, citing *River Road Alliance, Inc. v Corps of Engineers of U.S. Army*, 764 F.2d 445, 451 (7th Cir. 1985).

MDNR conducted a detailed environmental assessment study of the project and determined that there would be no significant adverse effects on the environment. The very purpose of the project is to improve the environment and the record indicates

that the project will substantially reduce pollution to the Rouge River and that there are no significant adverse effects on the human environment by the combined sewer overflow retention treatment basin. Noting NEPA's original purpose was to promote preservation and enhancement in the environment, courts have noted the irony of the use of NEPA as a device to frustrate actions intended to benefit the environment. *U.S. v South Florida Water Management District*, 847 F.Supp. 1567, 1580 (S.D. Fla 1992), Aff'd in part, rev'd in part and remanded on other grounds, 28 F.3d 1563 (11 Cir. 1994), cert. denied, __ U.S. __, 115 S.Ct. 1956, 131 L.Ed.2d; *Pacific Legal Foundation v Andrus*, 657 F.2d 829 (6th Cir. 1981).

II. THE DISTRICT COURT CORRECTLY DETERMINED THAT MEPA WAS NOT VIOLATED BECAUSE THE LEVEL OF IMPAIRMENT WAS NOT MET IN ORDER TO JUSTIFY JUDICIAL INTERVENTION

The Michigan Court of Appeals has identified what is necessary for the plaintiff to establish a prima facia case of a MEPA violation: (1) whether a natural resource is involved; and (2) whether the impact of the activity on the environment rises to the level of ***impairment***. *Kent Road Commission v Hunting*, 170 Mich App 222, 233; 428 N.W.2d 353 (1988). The District Court, affirmed by the Court of Appeals, determined that plaintiff's MEPA claim is without merit. Petitioner claims that the construction of the Linden Park combined sewer overflow retention treatment basin will impair the environment. What does it mean to impair the natural resources of the air or the water? In *Michigan United Conservation Clubs v Anthony*, 90 Mich App 99, 105; 280 N.W.2d 883 (1978), the court cited *Ray v Mason*, 393 Mich 294, 306; 224 N.W.2d 883 (1975) as providing the MEPA standard of review and defined the word "impair" citing from Black's Law Dictionary as follows:

> To weaken, to make worse, to lessen, empower, diminish, or relax, or otherwise effect in an injurious way.

Construction of the Linden Park combined sewer overflow retention treatment basin will dramatically improve the quality of

the waters in the Rouge River. From an average of 220 million gallons per year of combined sewage being dumped into the Rouge River, the Linden Park combined sewer overflow retention treatment basin will reduce this number to approximately 43 million gallons per year. Additionally, the portion that still may be discharged into the Rouge River will be skimmed, settled and disinfected so that the outflow will be significantly cleaner than combined sewer outflow currently being discharged. In *City of Portage v Kalamazoo County Road Commission*, 136 Mich App 276, 281; 355 N.W.2d 913 (1984), a Michigan Court of Appeals indicated that "a court is not empowered to enjoin any conduct which does not rise to the level of an environmental risk prescribed by MEPA. Citing *Committee for Sensible Land Use v Garfield Township*, 124 Mich App 559, 564 (1983).

Dafter Sanitary Landfill v Department of Natural Resources, 198 Mich App 499, 503-504; 499 N.W.2d 383 (1993), set forth the threshold test for courts to utilize and determine whether the impact of a proposed action is so significant as to constitute an environmental risk and require judicial intervention. In applying the *Dafter* criteria, it is clear that Petitioner failed to show that the combined sewage overflow retention treatment basin rises to the level of impairment contemplated under MEPA. The environmental analysis performed by MDNR identified specific steps that would minimize environmental impact and the District Court correctly applied MEPA in determining that Plaintiff had failed to establish a prima facia case. Petitioner erroneously claims that the sole purpose of the project was to meet water quality standards. The federal action and consent judgment entered in the District Court mandated that Birmingham address the combined sewer overflow problem in the Rouge River. Birmingham has met that goal. MEPA was correctly reviewed by the District Court and the claim was without merit.

III. THERE WAS NOT AN IMPROPER SEGMENTATION OF THE PROJECT UNDER NEPA.

The NPDES permit issued to Birmingham recognized that complete and instantaneous elimination of pollution of the Rouge River was not feasible. Birmingham and MDNR studied several

possible alternatives to address combined sewer overflows evaluating the benefits, costs and impacts of each alternative.

Petitioner claims that the NPDES permit was an improper segmentation of the project. This is incorrect. A result of the prior lawsuit and consent judgment of the River Rouge communities, the focus of the project was to eliminate combined sewer overflow as opposed to all water quality standards. The concept of segmentation is to divide a large or cumulative project into smaller components in order to avoid designating the project a major federal action. This has been held to be unlawful. *Park County Resource Council, Inc. v U.S. Department of Agriculture*, 817 F.2d 609, 622 (10th Cir. 1987). Generally, segmentation is claimed in highway projects which are artificially divided into smaller, less significant actions to avoid NEPA's requirements. *Dickman v City of Santa Fe*, 724 F.Supp. 1341, 1345 (D. N.M. 1989).

Petitioner mischaracterizes the purpose of the combined sewer overflow retention treatment basin. While the attainment of water quality standards is clearly the goal, the project's focus is the elimination of raw sewage discharges into the Rouge River. Segmentation did not occur in this case. The environmental assessment noted that the eventual goal was to meet water quality standards.

Petitioner claims this delay in studying and meeting water quality standards is unreasonable, unpermissible and equates to segmentation. Petitioner claims that if Respondents had considered the possible future costs of meeting water quality standards (notwithstanding the degree of speculation needed would render such an exercise essentially meaningless), Birmingham would have elected separated sewers as the project. Petitioner wants to focus on the goal of a pristine river and ignore the facts that the Rouge is one of the most polluted rivers in the nation and that destruction of thousands of trees, tearing up 80% of the roads, higher costs and disturbing private property are all legitimate factors which Respondents looked at, in addition to water quality, in deciding to construct the combined sewer overflow retention treatment basin. There was no artificial segmentation in this case.

The analysis of the environmental impacts of the project and study of the alternatives was done with an open mind and without any preordained decision as to a project plan. Petitioner's claim that Respondents attempted some type of post-hoc compliance with NEPA is simply not true. The environmental consequences of the various projects were considered and a project was selected. There was no improper segmentation in addressing the goal of compliance with water quality standards until after a study of how the combined sewer overflow retention treatment basin had improved the Rouge River by its elimination of raw sewage discharges.

CONCLUSION

In conclusion, for the foregoing reasons, Birmingham respectfully requests that this Petition For a Writ of Certiorari be denied.

Respectfully submitted,

BEIER HOWLETT, P.C.

By: _____

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Dated: August 9, 1996

No. 95-2054

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Respondents.

APPENDIX

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Appendix A

Rouge River National Wet Weather Demonstration Project
Monthly Construction Status Report

ROUGE RIVER NATIONAL WET WEATHER DEMONSTRATION PROJECT

MONTHLY CONSTRUCTION STATUS REPORT

SUBGRANTEE: Oakland County Drain Commissioner
Birmingham CSO Drain

PERIOD OF: June 20, 1996 to July 19, 1996

This report is due on the 20th day of the month following the reporting period.

I. FINANCIAL DATA

	Cumulative Amount	% of Total $ Budget
A. CONTRACT(S) AMOUNT	$26,252,062.00	100.00
B. NET CHANGE BY WORK ORDERS	$ 263,197.47	1.00%
C. CONTRACT(S) AMOUNT TO DATE	$26,515,259.47	101.00%
D. PROJECT CUMULATIVE COST TO DATE	$20,244,194.60	76.35%
E. BALANCE REMAINING	$ 6,266,064.87	23.48%

DATE SUBMITTED: July 19,1996

CONTACT PERSON: Philip Sanzica, P.E.

ADDRESS: One Public Works Drive
Waterford, Michigan 48238

TELEPHONE NUMBER: 810-858-1031

SIGNED: /s/ Philip Sanzica
Subgrantee's Representative

MONTHLY CONSTRUCTION STATUS REPORT
(Continued)
Birmingham CSO Drain

PERIOD OF: June 20, 1996 to July 19, 1996

II. ACTIVITIES REPORTING

A. ESTIMATED % OF TOTAL CONSTRUCTION COMPLETED 76.35%

B. BRIEF DESCRIPTION OF TASKS PERFORMED THIS PERIOD

Contract 1 — Basin construction has attain the following % complete in the various areas:

Walls -	87%	Baffle Beams —	75%
Columns -	84%	Precast Concrete —	70%

Control Building concrete is about 99% complete.

Mechanical piping and duct work installation in the Control Building has stopped due to the recent flooding. Miscellaneous utility piping is being installed now.

Electrical work in the Control Building is concentrating running conduit and installing panels not affected by the flooding.

Structural backfill is about 80% complete.

Work on outfall structure is about 85% compete.

Influent structure and influent conduits are about 65% complete.

(continued)

Contract 2 – On June 18, 1996, a 3" to 3.5" rain caused the Rouge River to reach a flood state resulting in the RTB and tunnel filling with water. The high water level at the RTB/Tunnel Chamber was recorded at elevation 716.7. The twenty-year and fifty-year flood stage elevations, at that location, are approximately 716.56 and 717.04, respectively.

No contract work has taken place this period, as the contractor has been pumping water, cleaning the Tunnel and repairing equipment damaged by the flood. Contract work is expected to resume in late July.

(continued)

MONTHLY CONSTRUCTION STATUS REPORT
(Continued)
Birmingham CSO Drain

PERIOD OF: June 20, 1996 to July 19, 1996

II. ACTIVITIES REPORTING

A. ESTIMATED % OF TOTAL CONSTRUCTION COMPLETED 76.35%

B. BRIEF DESCRIPTION OF TASKS PERFORMED THIS PERIOD

Contract 3 — Kajima working on final restoration and punch list items.

Final connections to be made after the RTB is in service.

Contract 4 – The 54" diameter sewer from CS-36 north to CS-39 located at Willow Lane and Midland Avenue has been completed. Remaining mainline work is the 36" diameter sewer connection between CS-9 and SAN-93 at Harmon Street and Woodward Avenue.

Pavement replacement and final restoration work has commenced.

Final connections to be made after the RTB is in service.

MONTHLY CONSTRUCTION STATUS REPORT
(Continued)
Birmingham CSO Drain

PERIOD OF: June 20, 1996 to July 19, 1996

III. ISSUES AND UNANTICIPATED OCCURRENCES

INDENTIFY ISSUES AND UNANTICIPATED OCCURRENCES DURING THIS PERIOD AND PREVIOUS PERIODS

A. Current Period - Identify issue or unanticipated occurrences that either have a positive or negative impact on the completion of the project.

Contract 2 — On June 18, 1996, a 3" to 3.5" rain caused the Rouge River to reach a flood state resulting in the RTB and tunnel filling with water. The high water level at the RTB/Tunnel Chamber was recorded at elevation 716.7. The twenty-year and fifty-year flood stage elevations, at that location, are approximately 716.56 and 717.04, respectively.

No contract work has taken place this period, as the contractor has been pumping water, cleaning the Tunnel and repairing equipment damaged by the flood. Contract work is expected to resume in late July.

B. Previous Period - Briefly describe the resolution of previously reported issues and unanticipated occurrences, if applicable.

"None"

Appendix B

Excerpt from Detroit Free Press, July 30, 1996

EPA chief praises Rouge River cleanup
By Dan Shine
Free Press Staff Writer

The Rouge is looking rosy, but hold off on any fishing or swimming excursion for now.

The head of the Environmental Protection Agency came to town Monday to be updated on the cleanup of the Rouge River and praised the progress made in restoring one of the country's most polluted waterways.

"This is something I've wanted to see for a long time," EPA Administrator Carol Browner said at Henry Ford's estate on the University of Michigan-Dearborn campus. "There is widespread involvement of local governments, neighborhoods and children. Perhaps we can learn something here to use in other communities."

Browner was invited to town by U.S. Rep. John Dingell, D-Dearborn, who assembled environmentalists, educators and local officials to brief the EPA chief on the cleanup efforts. Browner also toured a combined sewer overflow retention basin under construction in Dearborn Heights and met with elementary and high school students who are studying water samples from the river.

A big part of the problem, Dingell said, is antiquated water treatment systems. The EPA, with state, county and local governments, is building combined sewer overflow basins and studying ways to keep pollutants from construction sites, yards, farms and city streets in the 438 square miles that make up the river's watershed from washing into the Rouge after heavy rains.

A local citizens group, the Friends of the Rouge, has organized annual river cleanups, started a student environmental education program and initiated an "adopt-a-stream" program. And a Barney-like dinosaur called SnoopAsaurus instructs kids how to keep their homes and yards "river friendly."

Jim Graham, executive director of Friends of the Rouge, said the work will make a dramatic difference in the river's cleanliness.

"It won't clean up everything but will make it better than it has been," he said. "And it's not just one agency or one group trying to do it all. We're making a lot of positive progress."

Fish population has expanded in the past few years and canoeing is allowed on parts of the Rouge. But neither Browner nor Dingell would predict when the river would be safe for fishing and swimming.

Browner said eliminating the pollution in the river "is not something done overnight. Remember where we started."

She said in the past, some communities have not been willing to combine efforts to clean rivers. That is not the case along the Rouge, Browner said.

"What I saw today is a community that knows it made the right decision," she said. "We know today what it takes to solve this problem. It takes all of us."